

**STATE OF NEW YORK
STATE OF CALIFORNIA
STATE OF CONNECTICUT
STATE OF ILLINOIS
STATE OF IOWA
STATE OF MAINE
COMMONWEALTH OF MASSACHUSETTS
STATE OF NEW HAMPSHIRE
STATE OF NEW JERSEY
STATE OF NEW MEXICO
STATE OF NORTH CAROLINA
COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF ENVIRONMENTAL PROTECTION
STATE OF RHODE ISLAND
STATE OF VERMONT
STATE OF WISCONSIN
NATURAL RESOURCES DEFENSE COUNCIL, INC.
MASSACHUSETTS UNION OF PUBLIC HOUSING TENANTS
TEXAS RATEPAYERS' ORGANIZATION TO SAVE ENERGY**

July 1, 2005

**BY CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Hon. Samuel W. Bodman, Secretary
U.S. Department of Energy
1000 Independence Avenue, S.W.
Washington, D.C. 20585

Dear Secretary Bodman:

We are gravely concerned about the Department of Energy's extended failure to meet statutory deadlines to promulgate revised energy efficiency standards for numerous consumer and commercial products. DOE, scientists, and industry all recognize that improved appliance efficiency standards are feasible and economical. DOE's continuing failure to meet statutory deadlines for new efficiency standards, which began over a decade ago and worsens each year, imposes higher electricity and natural gas bills on our states and consumers, burdens the nation's electricity grid, and thwarts Congress' goals of reducing energy consumption and associated costs. It also increases fossil fuel consumption, thereby increasing air pollution that harms public health and the environment and conflicting with the nation's clear interest in reducing its dependence on foreign sources of energy.

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Numerous stakeholders have raised these concerns with DOE over these delays, and have met with DOE officials several times over at least seven years, including with your predecessor Secretary Abraham, to try to get these energy efficiency rulemakings back on track. However, DOE continues to fall ever farther behind with each passing year. Indeed, although the Administration's National Energy Plan relies heavily on new efficiency standards to solve the nation's energy problems, DOE has not issued any appliance standard increasing efficiency since January 2001.

We cannot countenance further delays in DOE's establishment of appliance efficiency standards. We respectfully request that DOE agree to a binding schedule to come into prompt compliance with its statutory obligations for the issuance of efficiency standards. In the absence of such a commitment by DOE, we intend to commence litigation to compel DOE to comply with all applicable deadlines and requirements for the issuance of revised efficiency standards for consumer and commercial products.

Consumer and Environmental Importance of Efficiency Standards

Appliance and equipment efficiency standards have been one of the most successful policies used by the federal government and the states to save energy. These standards not only save energy but also reduce pollution, improve electric system reliability, and lower energy bills for consumers and businesses. The decreased pollution, in turn, enhances public health, lowers health care costs, and reduces acid rain, smog, global warming, and other harms -- all while cutting consumer energy bills.

Based on DOE figures, energy efficiency experts calculate that existing federal appliance standards will save U.S. consumers nearly \$200 billion in lower energy costs by 2030 -- about \$2,000 per household.¹ As of 2000, federal appliance standards had already cut U.S. electricity use by about 2.5 percent and reduced carbon emissions from fossil fuel use by nearly 2 percent.² These electricity savings are projected to triple by 2020 as inefficient appliances are replaced by newer ones subject to standards already in effect. If DOE gets back on schedule for rulemakings, which is our goal, the resulting standards will add substantially to the current level of savings. These immense economic benefits do not even count the savings to consumers from lower energy prices that result from a better balance between energy supply and demand.

The American Council for Energy Efficient Economy (ACEEE) estimates that each year of delay in revising just three of the standards (those for furnaces, large commercial air

¹ S. Nadel, A. deLaski, J. Kliesch, A. Shipley, E. Osann, and C. Harak, *Powerful Priorities: Updating Energy Efficiency Standards for Residential Furnaces, Commercial Air Conditioners, and Distribution Transformers* (ACEEE, September 2004), 7.

² *Id.* at 71; *see also* H. Geller, T. Kubo, and S. Nadel, *Overall Savings from Federal Appliance and Equipment Efficiency Standards* (ACEEE, February 2001).

conditioners, and dedicated transformers) increases annual energy use by 3.3 million megawatt hours of electricity and by 11 billion cubic feet of natural gas. Those savings alone are enough electricity to power about 330,000 typical U.S. homes and enough natural gas to heat about 170,000 homes.³ Despite DOE's recognition that these are "high priority" rules, the Department is six to eleven years behind the statutory schedule.

DOE's Legal Deadlines and Obligations

Under the Energy Policy and Conservation Act (EPCA), 42 U.S.C. § 6291 *et seq.*, as amended in 1978, 1987 (when the National Appliance Efficiency Conservation Act [NAECA] was adopted) and 1992, Congress established initial federal energy efficiency standards for almost two dozen consumer and commercial products. Congress also imposed upon DOE the nondiscretionary duty to propose and complete rulemakings by specified deadlines to consider revising these standards. For the most part, states have been preempted from establishing their own efficiency standards for products regulated by DOE, making timely and full implementation of the law by DOE all the more important.

When considering whether to revise an efficiency standard for consumer products, DOE must select that standard that is "designed to achieve the maximum improvement in energy efficiency ... which the Secretary determines is technologically feasible and economically justified." 42 U.S.C. § 6295(o)(2)(A). DOE lacks authority to weaken an energy efficiency standard once it has been established by Congress or by a subsequent rulemaking. 42 U.S.C. § 6295(o)(1). *NRDC v. Abraham*, 355 F.3d 179 (2d Cir. 2004). To date, DOE has failed to meet its statutory deadlines for revisions of efficiency standards for consumer products including the following: furnaces and boilers, dishwashers, clothes dryers, ranges and ovens, room air conditioners, central air conditioners and heat pumps, water heaters, pool heaters, direct heating equipment, general service incandescent light bulbs, fluorescent lamps, and incandescent reflector lamps.

DOE is also responsible for considering and granting petitions for further amended standards for covered products if evidence is presented that any such standard would result in significant conservation of energy and is technologically feasible and cost effective. DOE recently granted such a petition with respect to residential refrigerators, creating a legal obligation for DOE to amend the standard for this product in a timely fashion. DOE has not yet commenced a rulemaking for revising this standard.

For most types of commercial equipment covered by the statute, as with consumer products, DOE must periodically revise the initial efficiency standards set by statute. Again, DOE may not weaken efficiency standards for commercial products. 42 U.S.C. § 6313(a)(6)(B)(ii). For commercial heating and cooling products, Congress has established that

³ S. Nadel, *et al.*, 6-7.

DOE's standard revision requirements are triggered by revisions of the American Society of Heating, Refrigeration and Air-Conditioning Engineers, Inc. ("ASHRAE"), a non-profit organization that establishes industry efficiency standards by stakeholder consensus. 42 U.S.C. § 6313. The statute requires that DOE revise efficiency standards for specified products if and when ASHRAE amends any of its standards, and that DOE either adopt the ASHRAE standard or establish a more stringent standard if a more stringent standard "would result in significant additional conservation of energy and is technologically feasible and economically justified." 42 U.S.C. § 6313(a)(6)(A). If DOE establishes the amended ASHRAE standard, it must do so for each effective date specified in the ASHRAE standard, and the standard must go into effect on or after specified periods after the ASHRAE effective dates. Id. If DOE determines that a more stringent standard is required, such a standard must go into effect on or after four years after such a determination is published in the Federal Register. 42 U.S.C. § 6313(a)(6)(C).

ASHRAE issued its amended ASHRAE/IES Standard 90.1 in 1999 – a set of efficiency standards for various products – and thereby triggered DOE's responsibilities to either adopt these standards, or to issue more stringent ones, for specified commercial products. In the six years since ASHRAE issued its revised standards, DOE has failed to adopt either the ASHRAE revised standards or more stringent standards for the following commercial products: most commercial packaged air-conditioners and heat pumps (65-240 kBtu), commercial packaged air-conditioners and heat pumps (under 65 kBtu), packaged terminal air-conditioners and heat pumps, packaged boilers, and instantaneous water heaters.

DOE has also failed to meet its statutory deadlines for establishing initial efficiency standards for electric motors, 42 U.S.C. § 6313(b), as well as distribution transformers, 42 U.S.C. § 6317(a). Finally, DOE has failed to meet its statutory deadlines for issuing testing requirements and initial standards for high-intensity discharge lamps and small electric motors, 42 U.S.C. § 6317(a), (b).

In sum, despite explicit statutory deadlines and requirements for issuing efficiency standards for many consumer and commercial products, DOE has fallen increasingly far behind schedule over the course of several administrations. As set forth above and in the attached chart, DOE has failed to meet one or more statutory deadlines for revising or establishing standards for more than 20 categories of consumer and commercial products. In some cases, DOE is more than ten years behind schedule.

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Conclusion

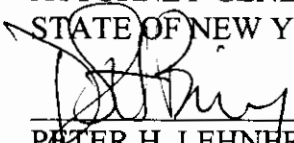
Regrettably, DOE's prolonged failure to issue revised appliance efficiency standards has harmed, and will continue to harm, consumers, the environment, and electric reliability in the United States. DOE's failure to comply with the explicit deadlines and mandates of federal law, including 42 U.S.C. §§ 6295, 6313, and 6317, subject it to suit under 42 U.S.C. § 6305(a) and § 6316, and/or the Administrative Procedure Act. Accordingly, to the extent required, we hereby provide notice of our intent to pursue such litigation. Other parties not signatories to this letter may also join this litigation with respect to the same claims covered by this letter.

As noted above, we wish to achieve full and timely implementation of Congress's mandates for enhanced efficiency standards and will resort to litigation only if necessary. Therefore, we are willing to work with DOE promptly to establish a binding schedule – set forth in a court-approved consent decree – under which DOE will issue these standards. If you wish to discuss this option with us, please call Peter Lehner, Chief of the Environmental Protection Bureau for the New York Attorney General's Office, at 212-416-8450.

Sincerely,

ELIOT SPITZER
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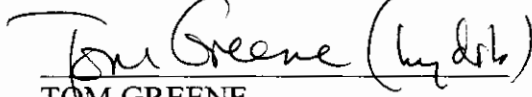
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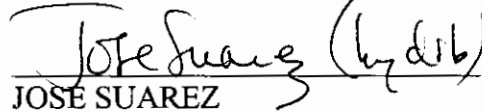
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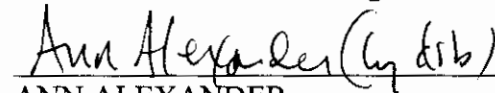
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cc: David Garman
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Mail Stop EE-1
U.S. Department of Energy
1000 Independence Avenue, S.W.
Washington, DC 20585

Federal Trade Commission
Attention: William Blumenthal, General Counsel
Office of the General Counsel
600 Pennsylvania Avenue, N.W.
Washington, DC 20580

CHART OF DOE APPLIANCE STANDARDS VIOLATIONS

<i>Product Category</i>	<i>Initial statutory standard</i>	<i>First revision (or initial standard) due</i>	<i>First revision completed</i>	<i>Second revision due</i>	<i>Second revision completed</i>
Room air conditioners	Eff. Date 1990 42 USC § 6295(c)(1)	Jan. 1992 42 USC § 6295(c)(2)(A)	Sept. 1997 (eff. Oct. 2000)	Five years after first revision completed (i.e. Sept. 2002)	OVERDUE
Central air conditioners and heat pumps	Eff. Date 1992/1993 42 USC § 6295(d)(1)-(2)	Jan. 1994 42 USC § 6295(d)(3)(A)	Jan. 2001 (eff. Jan. 2006)	Jan. 2001 42 USC § 6295(d)(3)(B)	OVERDUE
Water heaters	Eff. Date 1990 42 USC § 6295(e)(1)	Jan. 1992 42 USC § 6295(e)(4)(A)	Jan. 2001 (eff. Jan. 2004)	Jan. 2000 42 USC § 6295(e)(4)(B)	OVERDUE
Pool heaters	Eff. Date 1990 42 USC § 6295(e)(2)	Jan. 1992 42 USC § 6295(e)(4)(A)	OVERDUE	Jan. 2000 42 USC § 6295(e)(4)(B)	OVERDUE
Direct heating equipment	Eff. Date 1990 42 USC § 6295(e)(3)	Jan. 1992 42 USC § 6295(e)(4)(A)	OVERDUE	Jan. 2000 42 USC § 6295(e)(4)(B)	OVERDUE
Furnaces and boilers	Eff. Date 1992 (for most products) 42 USC § 6295(f)(1)	Jan. 1994 42 USC § 6295(f)(3)(B)	OVERDUE	Jan. 2007 42 USC § 6295(f)(3)(C)	Not yet due
Small furnaces	Not established	Jan. 1989 42 USC § 6295(f)(1)(B)	1990	Jan. 1994 42 USC § 6295(f)(3)(B)	OVERDUE
Mobile home furnaces	Eff. Date 1990 42 USC § 6295(f)(2)	Jan. 1992 42 USC § 6295(f)(3)(A)	OVERDUE	Jan. 1994 42 USC § 6295(f)(3)(B)	OVERDUE
Dishwashers	Eff. Date 1988 42 USC § 6295(g)(1)	Jan. 1990 42 USC § 6295(g)(4)(A)	May 1991 (eff. May 1994)	Five years after first revision completed (i.e. May 1996)	OVERDUE
Clothes dryers	Eff. Date 1988 42 USC § 6295(g)(3)	Jan. 1990 42 USC § 6295(g)(4)(A)	May 1991 (eff. May 1994)	Five years after first revision completed (i.e. May 1996)	OVERDUE

<i>Product Category</i>	<i>Initial statutory standard</i>	<i>First revision (or initial standard) due</i>	<i>First revision completed</i>	<i>Second revision due</i>	<i>Second revision completed</i>
General service incandescent light bulbs	Not established	Nov. 1997 (suds due 3.5 years after FTC labeling rule issued) ¹ 42 USC § 6295(i)(5)	OVERDUE	April 2002 42 USC § 6295(i)(4)	OVERDUE
Ranges and ovens	Eff. Date 1990 42 USC § 6295(h)(1)	Jan. 1992 42 USC § 6295(h)(2)(A)	OVERDUE FOR GAS COOKING PRODUCTS	Jan. 1997 42 USC § 6295(h)(2)(B)	OVERDUE
Fluorescent lamp ballasts	Eff. Date 1990/1991 42 USC § 6295(g)(5)	Jan. 1992 42 USC § 6295(g)(7)(A)	Sept. 2000 (eff. 2005 for most products, 2010 for others)	Five years after first revision completed (i.e. Sept. 2005) 42 USC § 6295(g)(7)(B)	Will be missed since DOE has not begun work.
Fluorescent lamps	Eff. Date 1994/1995 42 USC § 6295(i)(1)	April 1997 42 USC § 6295(i)(3)	OVERDUE	April 2002 42 USC § 6295(i)(4)	OVERDUE
Incandescent reflector lamps	Eff. Date 1995 42 USC § 6295(i)(1)	April 1997 42 USC § 6295(i)(3)	OVERDUE	April 2002 42 USC § 6295(i)(4)	OVERDUE
Motors (1 to 200 hp)	Eff. Date 1997/1999 42 USC § 6313(b)(1)	Oct. 1999/ Oct. 2001 42 USC § 6313(b)(3)(A)	OVERDUE	Two years after first revision takes effect 42 USC § 6313(b)(3)(B)	Not yet due
High intensity discharge (HID) lamps	Not established	Oct. 1996 42 USC § 6317(a)(1)-(2)	OVERDUE	Not required	Not applicable
Electric distribution transformers	Not established	Oct. 1996 42 USC § 6317(a)(1)-(2)	OVERDUE	Not required	Not applicable
Small motors	Not established	Oct. 1996 42 USC § 6317(b)(1)-(2)	OVERDUE	Not required	Not applicable
Commercial packaged air-conditioners and heat pumps (65 – 240 kBtu)	Eff. Date 1994 42 USC § 6313(a)(1)-(2)	Triggered by Oct. 1999 revision to ASHRAE 90.1 42 USC § 6313(a)(6)(A)	OVERDUE	Triggered by next revision to ASHRAE 90.1	Not yet due

¹ The FTC issued its labeling rules on May 13, 1994 (58 Fed. Reg. 25,176), just one month later than required by law.

<i>Product Category</i>	<i>Initial statutory standard</i>	<i>First revision (or initial standard) due</i>	<i>First revision completed</i>	<i>Second revision due</i>	<i>Second revision completed</i>
Commercial packaged air-conditioners and heat pumps (under 65 kBtu)	Eff. Date 1994 42 USC § 6313(a)(1)	Triggered by Oct. 1999 revision to ASHRAE 90.1. 42 USC § 6313(a)(6)(A)	OVERDUE	Triggered by next revision to ASHRAE 90.1	Not yet due
Packaged terminal air-conditioners and heat pumps	Eff. Date 1994 42 USC § 6313(a)(3)	Triggered by Oct. 1999 revision to ASHRAE 90.1 42 USC § 6313(a)(6)(A)	OVERDUE	Triggered by next revision to ASHRAE 90.1	Not yet due
Warm air furnaces	Eff. Date 1994 42 USC § 6313(a)(4)	Triggered by Oct. 1999 revision to ASHRAE 90.1 42 USC § 6313(a)(6)(A)	Jan. 2001 (eff. Oct. 2003)	Triggered by next revision to ASHRAE 90.1	Not yet due
Packaged boilers	Eff. Date 1994 42 USC § 6313(a)(4)	Triggered by Oct. 1999 revision to ASHRAE 90.1 42 USC § 6313(a)(6)(A)	OVERDUE	Triggered by next revision to ASHRAE 90.1	Not yet due
Instantaneous water heaters	Eff. Date 1994 42 USC § 6313(a)(5)	Triggered by Oct. 1999 revision to ASHRAE 90.1 42 USC § 6313(a)(6)(A)	OVERDUE	Triggered by next revision to ASHRAE 90.1	Not yet due